UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,582	01/27/2004	Tetsuro Motoyama	245416US2	8976

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C. IRVIN MCCLELLAND
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
WON, MICHAEL YOUNG

ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Advisory Action *Before the Filing of an Appeal Brief*	Application No. 10/764,582	Applicant(s) MOTOYAMA ET AL.	
	Examiner Michael Y. Won	Art Unit 2155	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>23 August 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>*1-30*</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Attached Document.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

Response to Arguments

1.   Applicant(s) argue that Aggarwal (US 2004/0088405 A1) (herein referred to as *Aggarwal*), fails to disclose the two conditional steps of "if" in the limitation:

"if the vendor information was obtained from the device, (1) obtaining, from a second memory, support information for extracting the status information using each of the respective communication protocols, and (2) storing the vendor information and the respective support information in each protocol object of the plurality of protocol objects; and

if the vendor information was not obtained from the device, repeating the preceding steps until the vendor information is obtained".

In response to the argument of 1, *Aggarwal* clearly teaches or suggests the "if" logic. On page 9, paragraph [0340], *Aggarwal* teaches the situation of "if" when the vendor information is obtained and further teaches that the "database record may be updated with vendor and model information".

Aggarwal teaches on page 3, paragraph [0042] that the "System configuration may include information learned or discovered from the system and/or information entered" and further teaches each device is "associated with one or more fault and/or performance test... established via an auto-discovery mechanism" or manually entered or defined, wherein each device object includes one or more test objects. Clearly, such teachings suggest "obtaining, from a second memory, support information".

On page 4, paragraph [0046], *Aggarwal* adds that the "various associations may be stored in the configuration database"... "object-oriented database".

Furthermore, *Aggarwal* teaches of plurality of monitors or plug-ins based on plural protocols ([0051]: ICMP protocol, [0054]: SNMP protocol, [0068]: HTTP, FTP, and SNMP protocols). Clearly in would be inherent that if the <u>vendor information were not obtained</u> using SNMP, it would be obtained using any number of the various protocols taught by *Aggarwal*. SNMP is taught as an example and is not intended to limit the invention of *Aggarwal*.

2.   Applicant(s) argue that *Aggarwal* does not teach that the vendor information and the support information are "not stored in the same place".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., vendor information and the support information are "not stored in the same place") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, *Aggarwal* explicitly teaches in Fig.7-10 and paragraph [0023], and [0046] that configuration information and associations, respectively, may be stored in an object-oriented data structure.

3.   Applicant(s) argue that Zupcsics et al. (US 5,787,248 A) (herein referred to as

Zupcsics) does not cure the deficiencies of Aggarwal with respect to the arguments

above.

        In response, *Zupcsics* is not relied upon to teach anything else but the selecting

step.

4.   For the reason above claims 1-30 remain rejected and pending.

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael Y. Won whose telephone number is 571-272-

3993. The examiner can normally be reached on M-Th: 7AM-5PM.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael Won

August 30, 2006

SALEH NAJJAR
SUPERVISORY PATENT EXAMINER